AND
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In the
Supreme Court of the United States

ADVOCATE HEALTH CARE NETWORK, et al.,
Petitioners,

v.

MARIA STAPLETON, et al.,
Respondents.

(Caption Continued on Inside Cover)

On Writs of Certiorari to the U.S. Courts of Appeals for the Third, Seventh, and Ninth Circuits

BRIEF FOR AMICI CURIAE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, CATHOLIC CHARITIES USA, CATHOLIC RELIEF SERVICES, THE NATIONAL CATHOLIC EDUCATIONAL ASSOCIATION, AND ASSOCIATION OF CATHOLIC COLLEGES AND UNIVERSITIES IN SUPPORT OF PETITIONERS

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LAURENCE KAPLAN,

Respondent.

DIGNITY HEALTH, et al.,

Petitioners,

v.

STARLA ROLLINS,

Respondent.

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STATEMENTS OF INTEREST[1]

The United States Conference of Catholic Bishops (USCCB) is an assembly of the hierarchy of the Catholic Church in the United States and the U.S. Virgin Islands who jointly exercises certain pastoral functions on behalf of the Catholic faithful in the United States. The purpose of the Conference is to promote the greater good that the Church offers humankind. This purpose is drawn from the universal law of the Church and applies to the national and regional episcopal conferences that are established all over the world for the same purpose.

The Bishops themselves constitute the membership of the Conference. The Conference is organized as a corporation in the District of Columbia. Its purposes under civil law are: "To unify, coordinate, encourage, promote and carry on Catholic activities in the United States; to organize and conduct religious, charitable and social welfare work at home and abroad; to aid in education; to care for immigrants; and generally to enter into and promote by education, publication and direction the objects of its being."

USCCB is also the central organization holding a group-tax exemption for Catholic organizations exempt under section 501(a) of the Internal Revenue

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[1] Pursuant to Supreme Court Rule 37.6, amici curiae state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from amici curiae, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3, counsel of record for all parties have consented to this filing in letters on file with the Clerk's office.

Code. The IRS's group ruling issued to USCCB establishes that Catholic organizations in the United States that are listed in the current edition of *The Official Catholic Directory* are recognized as exempt from federal income-tax and described in section 501(c)(3) of the Internal Revenue Code.

Catholic Charities USA is the national office for Catholic Charities agencies nationwide. For more than 100 years, it has guided and supported the vast network of Catholic Charities agencies in a common mission to provide service to people in need, to advocate for justice in social structures, reduce poverty, support families, and empower communities. In 2015, Catholic Charities agencies employed more than 53,000 individuals at 2,598 service sites in 49 states, the District of Columbia, and the 5 U.S. territories. Collectively, these agencies provided services to more than 8 million poor and vulnerable individuals in 2015 alone. While most Catholic Charities agencies participate in diocesan church plans, some maintain their own church plans. Hence, Catholic Charities USA has a strong interest in ensuring that its agencies can continue to use such plans, as they have for decades.

Catholic Relief Services was founded in 1943 by the Bishops of the United States to assist the poor and disadvantaged outside this country—helping people in need for more than 70 years. The ministry touches more than 100 million lives annually in more than 101 countries, by addressing the root causes and effects of poverty, promoting human dignity, and helping to build more just and peaceful societies. The organization's relief and development work is

accomplished through programs of emergency response, HIV/AIDS relief and prevention, health, agriculture, water, education, microfinance, and peacebuilding. Catholic Relief Services established and maintains benefit plans for its employees and their families through church plans. Hence, Catholic Relief Services has a strong interest in ensuring that it can continue to use those plans, as it has for decades.

The National Catholic Educational Association (NCEA) is a professional membership organization representing 150,000 Catholic educators serving 2 million students in Catholic elementary and secondary schools. The Association's mission statement and the expectations of its members call NCEA to provide leadership in shaping public policies and political actions that acknowledge and support the important role of Catholic schools in the United States. NCEA serves as the national voice for Catholic schools, which are ministries of the Catholic Church in America. Most Catholic elementary and secondary schools in the United States provide benefits to their employees and their families through church plans. Hence, NCEA has a strong interest in ensuring that Catholic schools can continue to use such plans, as they have for decades.

Association of Catholic Colleges and Universities (ACCU) is the collective voice of Catholic higher education in the United States. ACCU's membership includes 196 accredited Catholic institutions of higher learning in the United States, comprising more than 90 percent of such institutions. ACCU's affiliate members include

associations of Catholic colleges and universities sponsored by particular religious orders. ACCU's mission includes strengthening the mission and character of Catholic higher education, and ACCU is often involved in educating the general public on issues relating to Catholic education. Some ACCU members have employee benefit plans that have been treated as church plans. ACCU has a strong interest in ensuring that such members can continue to use such plans, as they have for decades.

INTRODUCTION AND SUMMARY OF ARGUMENT

Since long before the earliest days of the Republic, the Catholic Church has served the poor and the downtrodden on a non-denominational basis. The Church offers this help not because those in need are Catholic, but because those called to provide the aid are Catholic. Indeed, charity has always been a core component of the Catholic Church's activities, "as essential to her as the ministry of the sacraments and preaching of the Gospel." *Deus Caritas Est* No. 22. The Church effectuates that teaching through myriad Catholic ministries, ranging from local day-care centers, soup kitchens, hospitals, healthcare centers, and schools, to charitable organizations of national and global reach. Some of these ministries belong to one of the nearly 200 archdioceses and dioceses in the United States, but many do not. Some are affiliated with a local parish, but many are not. And for all but a handful, there is no corporate tie to the Holy See. Yet, as a matter of Catholic theology, the various ministries that the Church recognizes as Catholic ministries are all part of the Church. While they are recognized as such because they have the requisite degree of unity with the Church, they may be (and often are) civilly, structurally, and financially independent entities.

Catholic teaching also emphasizes the value of providing retirement, healthcare, and other benefits to those who help Church-affiliated organizations carry out the charitable work of the Church. Thus, long before the advent of ERISA, Catholic charitable organizations provided their workers with generous

benefits. In recognition of that reality (which is not unique to the Catholic Church), and to avoid imposing potentially crushing new obligations on such organizations, Congress has long exempted the benefit plans of church-affiliated organizations from the sometimes burdensome requirements of ERISA.

Many Catholic charitable organizations utilize—indeed, depend on—such exempt church plans to provide their employees with all manner of benefits. And the eligibility of each and every one of those plans for the church plan exemption depends on the Court's interpretation of the statutory provision at issue here. The courts below imposed a problematic, extra-textual requirement limiting the exemption to benefits plans "established by a church." If this Court were to affirm that erroneous holding, that artificial contraction of the exemption would impact not just Catholic hospitals, but Catholic charities of all shapes and sizes. To be sure, some plans used by Catholic ministries may still qualify as church plans even under the lower courts' artificially narrow definition, but others will not. And one thing is crystal clear: If this Court embraces an "established by a church" requirement, then federal agencies and courts will have no choice but to make sensitive determinations—more frequently and more often contested—about which religious organizations should be deemed "a church" and which should not.

There is no reason to think Congress wanted to create such an untenable situation. To the contrary, Congress amended the statute precisely because it wanted to ensure that church plans could be utilized by *all* of the agencies and ministries of a religion, not

just those that satisfied some narrow (pre)conception of a "church." And Congress did so for good reasons, as rendering the status of church plans dependent on the federal government's view of what is and is not part of a church or its mission would raise constitutional concerns of the first order.

The Catholic Church is a case in point. Charity is not just something the Church does; it is a core component of the Catholic faith that is undertaken by all manner of groups constituting the Church. And Catholic teaching encourages charity to be undertaken by Church-affiliated organizations, whether or not formally established by a parish or diocese. It likewise encourages the provision of generous benefits by such organizations without requiring all of those benefit plans to be established by a parish or diocese. The federal government should not interfere with those teachings or force the Church to centralize functions that would be better left to individual Church-affiliated organizations. At a minimum, constitutional avoidance principles compel this Court to reject an interpretation of the statute that would allow the federal government to decide which charitable organizations are close enough to the Church to count, or to force a degree of centralization or hierarchy on the Church that is inconsistent with its teachings.

In sum, the "established by a church" rule embraced by the courts below is fundamentally incompatible with the realities of religion in America, fundamentally incompatible with Congress' manifest intent, and fundamentally incompatible with the

Constitution. Accordingly, this Court should reject that ill-advised interpretation of the statute.

ARGUMENT

I. Charitable Ministries Are Central, Not Peripheral, Components Of The Catholic Church.

Charity is not just something that the Catholic Church or its members do. It is a central component of the Church's mission. The Church's "deepest nature is expressed in her three-fold responsibility: of proclaiming the word of God (*kerygma-martyria*), celebrating the sacraments (*leitourgia*), and exercising the ministry of charity (*diakonia*)." Benedict XVI, *Deus Caritas Est* No. 25 [Encyclical Letter on Charity] (2005).[2] In the Church's view, "[t]hese duties presuppose each other and are inseparable." *Id.* Accordingly, "[f]or the Church, charity is not a kind of welfare activity which could equally well be left to others, but is a part of her nature, an indispensable expression of her very being." *Id.* "The Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word." *Id.* No. 22.

Those words, from a 2005 encyclical issued by Pope Benedict XVI, reflect the teaching of Sacred Scripture and follow in a long tradition of Church emphasis of the centrality to the Gospel of charity in all its forms. Centuries earlier, Saint Augustine wrote, "[Y]ou do see the Trinity if you see [charity]." Augustine, *On the Trinity* VIII, 8, 12 (Gareth B. Matthews ed., Stephen McKenna trans., 2002). That

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[2] *Available at* http://bit.ly/1Fa2Uam.

message traces back to the words of Jesus: "[W]hatever you did for one of these least brothers of mine, you did for me." *Matthew* 25:40 (New American Bible, Revised Edition). "[C]haritable activity" thus "was naturally an essential part of the Church of Rome from the very beginning, based on the principles of Christian life given in the *Acts of the Apostles*." *Deus Caritas Est* No. 23. And over the centuries, "the exercise of charity became established as one of [the Church's] essential activities"; indeed, "love for widows and orphans, prisoners, and the sick and needy of every kind, is as essential to her as the ministry of the sacraments and preaching of the Gospel." *Id.* No. 22.

In sum, the Church does not view its charitable ministries as mere offshoots, affiliates, or subsidiaries, or simply something its members do. Those ministries are a core part of the Church itself. Without them, the Church would not just be a less effective force for good; it would be an incomplete manifestation of the Catholic faith. Indeed, as Pope Francis reminds us, particular Church communities "risk breaking down" unless they participate directly in this service and outreach to those in need. Francis, *Evangelii Gaudium* No. 207 (2013); *see also id.* Nos. 177-79.[3] Thus, for the Catholic Church, "the true subject of the various Catholic organizations that carry out a ministry of charity is the Church herself—at all levels, from the parishes, through the particular Churches, to the universal Church." *Deus Caritas Est* No. 32.

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[3] *Available at* http://bit.ly/1QpSFUd.

II. The Church's Ministries Constitute A Breadth Of Institutions, All Of Which Are Integral To The Life Of The Church.

In keeping with the teaching that charity is a core component of the faith, the Church does not view charity as something that should be left to the parish or diocese alone. Countless charities affiliated with the Church undertake charitable works that further the Church's overall mission. Charity is thus at once central to the Church but not necessarily centralized. All members of the faith are encouraged to be charitable and to undertake charitable works, but they are not enjoined to do so only through their local parish or diocese.

Indeed, there is a litany of charitable ministries affiliated with but not necessarily established by the parish or diocese, ranging from hospitals and healthcare clinics, to soup kitchens and homeless shelters, to parochial schools, colleges, and universities, and countless others. These ministries are as diverse in scope and structure as in mission. Some are focused on the needs of a local community; others are global in reach. Some have dozens of employees; others have thousands. Some are established by a parish or a diocese; others are established by orders of religious brothers or sisters; still others are established by the lay faithful. And the concept of "charity" embraced by the Church, including its affiliated ministries, is a broad one, encompassing healthcare, education, and much more.

For example, while Catholic Charities USA is a national organization, it is not the actual employer of the more than 53,000 individuals who carry out

Catholic Charities' mission of providing service to millions of people in need, advocating for justice in social structures, reducing poverty, supporting families, and empowering communities throughout the nation. Those thousands of individuals are instead employed by a vast network of more than 2,500 local Catholic Charities agencies and service centers that Catholic Charities USA supports—agencies spread across 49 states, the District of Columbia, and the 5 U.S. territories. The organizational structure of these myriad local agencies is by no means uniform. For instance, Catholic Charities of the Archdiocese of Washington, Inc., is an 890-employee-strong nonprofit corporation serving the District of Columbia and neighboring Maryland counties. Catholic Charities of the Diocese of Pittsburgh, Inc., provides care for the hungry, infirm, and homeless throughout southwestern Pennsylvania. While the D.C. and Pittsburgh agencies are separately incorporated entities, Catholic Charities, Diocese of Erie, is housed within the diocese itself. But those kinds of structural distinctions do not make an agency any more or less a part of the Church.

In contrast to the vast network of local Catholic Charities agencies, Catholic Relief Services (CRS) is a large, single entity that serves as the official international humanitarian agency of the Catholic Church in the United States. CRS directly employs thousands of people around the world and touches more than 100 million lives annually in more than 101 countries, providing humanitarian aid, responding to major emergencies, fighting disease and poverty, and nurturing peaceful and just

societies. CRS is a corporation with its own board of directors, but more than half of the board's members must be bishops, who are selected by a vote of the members of USCCB. More important, as its name reflects, CRS is associated with the Catholic Church not simply because of the details of its size, structure, or leadership, but because of its commitment to carrying out the charitable mission of the Church in the name of the Church.

Catholic ministries serving those in need of education come in all shapes and sizes as well. "The influence of the Church in the field of education is shown in a special manner by the Catholic school." Paul VI, *Gravissimum Educationis* No. 8 (1965).[4] The Catholic school "is designed not only to develop with special care the intellectual faculties but also to form the ability to judge rightly, to hand on the cultural legacy of previous generations, to foster a sense of values, to prepare for professional life." *Id.* No. 5. Consistent with those teachings, there are Catholic primary schools and secondary schools throughout the country. Some of these schools are part of a particular parish or diocese. For example, St. Augustine Catholic School is formally incorporated as part of the Archdiocese of Washington. But St. Francis Xavier Academy, St. Augustine's sister school just a few minutes down the road, is part of the separately incorporated Consortium of Catholic Academies. Although these schools take different corporate forms, they are indistinguishable in every respect relevant to whether they are part of the Church: They employ

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[4] *Available at* http://bit.ly/1lPzE25.

the same type of teachers and carry out the same mission, using the same religion curriculum. Still other schools, such as Mount Royal Academy in Sunapee, New Hampshire—no less a part of the Church—are entirely lay-operated but recognized by the diocese without being directly overseen or funded by it.

Higher education is a core part of the Church's mission as well. Catholic colleges and universities are "born from the heart of the Church." John Paul II, *Ex Corde Ecclesiae* Intro. (1990) (the Church's "magna carta" for Catholic colleges and universities).[5] Although the Catholic hierarchy can establish Catholic colleges and universities, so too with the consent of the competent ecclesiastical Authority, can other ecclesiastical or lay persons. *See id.* Part II, Art. 3. However established, Catholic colleges and universities are an integral part of the Church's life and work. Indeed, "[e]very Catholic University, without ceasing to be a University, has a relationship to the Church that is essential to its institutional identity." *Id.* Part I.A.3, ¶27. And "each Catholic University makes an important contribution to the Church's work of evangelization," first by serving as a "living *institutional* witness to Christ and his message, so vitally important in cultures marked by secularism, or where Christ and his message are still virtually unknown," and second by carrying out all of the institution's basic academic activities. *Id.* Part I.B.4, ¶49. "Precisely because it is more and more conscious of its salvific mission in this world, the Church wants to have [Catholic colleges and

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[5] *Available at* http://bit.ly/1PrbdQh.

universities] closely connected with it; it wants to have them present and operative in spreading the authentic message of Christ." *Id.* (citation omitted).

That close connection does not necessarily mean, however, that Catholic higher education institutions are directly affiliated with a particular parish or diocese. In fact, many are not. For example, in 1871, members of the Institute of the De La Salle Christian Brothers, an international Catholic teaching congregation, founded what would become Christian Brothers University in Memphis, Tennessee. Today, Christian Brothers University is separately incorporated with a majority-lay governing board, and consistent with its Lasallian mission, welcomes students of all faiths. Few (if any) would dispute that Christian Brothers University is a distinctly Catholic institution with close ties to the Church. The same is true of the approximately 200 other Catholic colleges and universities throughout the country. While many are not established by the Catholic hierarchy, that does not make them any less Catholic institutions.

As the history of the statute at issue in this case illustrates, *see* Pet'rs' Br. 5-9, there are also scores of other Catholic charities established by religious orders, such as orders of sisters. Whereas parishes and dioceses constitute the territorial jurisdictions of the Church, many religious orders are not tied to territory in the same way. They are instead bound by a distinct *charism*, or way of life. Bishops do not exercise direct control over all aspects of these orders, but instead exercise only a more limited vigilance. Nonetheless, these orders share the same

faith and moral commitments as the rest of the Church, and they carry out their ministry in the Church's name. Accordingly, when an order of sisters establishes a hospital, or a school, or a soup kitchen, that ministry is every bit as much a part of the Church as the religious order that established it. The same is true of the countless small, nonprofit organizations formed by Catholic lay people across the United States to provide charity or fulfill other Catholic missions. Such organizations are as essential to the Church and its mission as ministries that are national or global in reach.

In sum, while the diversity of Catholic nonprofit organizations underscores the breadth of the Church's charitable mission, it does not change one essential truth: Each of these charities, no matter how small or big, and whether founded by a parish, a diocese, a religious order, or laity, is just as central to the Church as the brick and mortar buildings where Catholics gather to worship.

III. Subjecting Church Plans To An "Established By A Church" Requirement Would Threaten Catholic Charitable Institutions Well Beyond Catholic Hospitals.

The decisions below pose a grave threat to the ability of these many Catholic ministries to provide aid to the millions of needy individuals who benefit from their services each year. The Church has long viewed "[t]he provision of ... benefits sufficient to support a family in dignity" as "a basic necessity" for those who devote their lives to those ministries. United States Conference of Catholic Bishops,

Economic Justice For All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy ¶103 (1986).[6] In keeping with the teaching, many of those ministries provide their employees with retirement and welfare benefit plans, including pensions, healthcare, and other benefits. They do so not because ERISA requires it, but because their faith requires it.

In recognition of that reality, Congress has long allowed churches and church-affiliated organizations to use church plans that are exempt from ERISA compliance unless the plan sponsor elects otherwise. That exemption is critical not because religious ministries seek to provide their employees with less valuable benefits, but because many such entities simply do not have the means to comply with all of the burdensome requirements that ERISA contemplates for differently situated secular employers. They are also critical because they avoid excessive government entanglement with the organization of the Church and its ministries. And equally important, they are critical because crippling regulatory requirements could threaten the ability of these organizations to continue providing aid to the millions of individuals they help each year.

Like Catholic ministries, Catholic church plans come in all shapes and sizes. Some are established by a diocese, but many are not. For instance, because of its size and scope (and commitment to the Church's teaching about providing benefits to its employees), CRS established and maintains its own

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[6] *Available at* http://bit.ly/SA42QD.

church plans for its tens of thousands of employees. Most Catholic Charities agencies use church plans to provide benefits to their employees as well. While many do so by participating in a diocesan plan, some maintain their own church plans. The same is true of Catholic primary, secondary, and higher education institutions; while some participate in diocesan plans, others established their own plans, or participate in plans established by an entity other than a diocese. And as for the multitude of Catholic ministries established by religious orders, many use plans established by the order itself.

No one questions the eligibility of these Church-affiliated organizations to use ERISA-exempt church plans. And for decades, no one questioned the flexibility of such organizations to decide whether to establish their own church plans, borrow plans established by a diocese or parish, or pursue some other means of accessing a church plan. But the decisions below threaten to fundamentally disrupt that settled order. The statutory definition of "church plan" is not unique to pension plans; nor is it unique to hospitals. It determines whether every pension plan, health plan, or other welfare plan in the country qualifies as a church plan. Accordingly, if the plans of the petitioners in this case must be "established by a church" to qualify as church plans, then so too must every church plan used by any Catholic charity, hospital, school, or other ministry throughout the country.

To be sure, there are some Catholic church plans that may satisfy an "established by a church" requirement. But that would depend a great deal on

how federal agencies and courts define "church." If, as the decisions below seem to contemplate, a pension or welfare plan must be established by a brick-and-mortar "church" or closely related entity to be exempt from ERISA, then that would raise a whole host of practical problems for Catholic charities (and undoubtedly for charities affiliated with other faiths as well). As Part II illustrates, while the Church views all of its charitable ministries as part of the Church and its mission, neither they nor their benefits plans are necessarily established by a particular parish, diocese, or religious order (to the extent an order would even qualify under the narrow view espoused by the courts below). Nor does the Church have some overarching employee benefits arm that could assume responsibility for establishing benefits plans for the thousands of Catholic ministries spread throughout the country. An "established by a church" requirement thus could leave countless Catholic ministries with no practical means of gaining access to a plan that qualifies as a church plan, and in turn jeopardize their ability to continue carrying out their critical missions of providing aid to millions in need.

More fundamentally, the federal government has no business essentially forcing the Church to centralize the provision of benefits. The Catholic Church may be more centralized and hierarchical than many other faiths, but it does not provide for centralized benefits for all Church-affiliated groups. Indeed, as the Catholic Charities example illustrates, Church teaching often favors doing charitable works at a more localized level. There is no reason to override the preferences of different faiths and

different church-affiliated organizations by limiting the church plan exemption to plans established by some narrow conception of "a church." Nor is there any reason to think that Congress intended to foster that untenable result when it *expanded* the definition of church plan to ensure that such plans could be used by religious nonprofits of all types.

IV. This Court Should Interpret The Statute To Avoid Creating Constitutional Problems.

The "established by a church" requirement suffers from the additional problem that it would infect the statute with grave constitutional doubt. It is a cardinal principle of statutory construction that statutes should be interpreted to avoid constitutional problems, not create them. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 696-99 (2001); *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 345-48 (1936) (Brandeis, J., concurring). That principle applies with particular force where religious freedom is at stake, as an "Act of Congress ought not be construed to violate" the "Religion Clauses of the First Amendment" when "any other possible construction remains available." *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 499-500 (1979). Yet the statutory interpretation embraced by the courts below would engender the very constitutional concerns that the 1980 amendments were intended to eliminate.

The first constitutional (and practical) problem with a church-establishment requirement is that it puts enormous pressure on the meaning and contours of the term "church." Congress amended the statute and expanded the exemption to agencies associated with churches precisely to broaden the exemption

and take pressure off of the definition of a church. But if what matters is not whether an entity is associated with a church but whether the entity's plan was established "by a church or by a convention or association of churches," then courts will have no choice but to confront a bevy of difficult questions. Does a church include an order of women religious that establishes a hospital? *See* IRS Gen. Couns. Mem. 37,266 (Sept. 22, 1977). What about an office established by a bishop to administer Catholic schools within the bishop's territorial jurisdiction? *See* Report & Recommendation at 10, 20, *Martinez-Gonzalez v. Catholic Sch. of the Archdioceses of San Juan Pension Plan*, No. 16-2077 (D.P.R. Jan. 9, 2017), ECF No. 77. Does the qualification of a local Catholic Charities agency as a "church" depend on whether it operates within the diocese, as does the Erie agency, or as a distinct corporate entity, as do the Pittsburgh and D.C. agencies?

Certainly the Church itself considers each of those ministries to be a core part of the Church. It is not at all clear why Congress would want to gainsay that view. To the contrary, Congress went out of its way in 1980 to limit the need to make difficult determinations about what is and is not part of a church, and who gets to answer to that question. And with good reason, as this Court has admonished time and again that it "is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Emp't Div. v. Smith*, 494 U.S. 872, 887 (1990) (quoting *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989)); *see also, e.g., Thomas v. Review Bd. of Ind. Emp't Sec.*

Div., 450 U.S. 707, 716 (1981). Whether a ministry is part of the Church is a question for the Church, not a question for federal agencies or courts. Asking courts to make those kinds of probing and individualized determinations would foster exactly the kind of "excessive entanglement between government and religion" that the Religion Clauses are intended to avoid. *Lemon v. Kurtzman*, 403 U.S. 602, 614 (1971).[7]

Allowing the federal government to decide what is and is not a church for purposes of establishing a benefits plan also would invite interference in the structure and governance of religious institutions—areas in which the federal government emphatically has no business inserting itself. *See, e.g., Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 703 (2012); *see also, e.g., Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 450 (1969). "First Amendment values are plainly jeopardized when" legal questions "turn on the resolution by civil courts of controversies over religious doctrine and practice," *id.* at 449—here, whether a particular ministry is part of a "church." Simply put, a church should enjoy just as much freedom to select its ministries as it does "freedom ... to select its ministers." *Hosanna-Tabor*, 132 S. Ct. at 705.

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[7] *Cf.* IRS, Tax Guide for Churches & Religious Organizations, Pub. 1828 at 33 (Aug. 20, 2015) (establishing a 14-factor test for determining what is a "church").

Finally, an "established by a church" requirement poses a very real risk of fostering the "sort of official denominational preference" that the First Amendment forbids. *Larson v. Valente*, 456 U.S. 228, 255 (1982). Just as the ministries of the Catholic Church are anything but uniform in their structure, so too are the many religious denominations that comprise our pluralistic society. Some of those faiths have a formal and unitary structure; others do not. Those organizational distinctions inevitably will impact whether a religious organization can demonstrate that it qualifies as a "church," or if not, can gain access to a benefits plan established by a church. And that in turn means that whether religious organizations may utilize church plans may depend on the particular religion with which they are affiliated.

It is difficult to see how that result could be reconciled with the Constitution's command that the state may not "prefe[r] some religious groups over" others. *Fowler v. Rhode Island*, 345 U.S. 67, 69 (1953); *see also, e.g.*, *Zorach v. Clauson*, 343 U.S. 306, 314 (1952) ("government must be neutral when it comes to competition between sects"). After all, laws can pose constitutional problems when they do "not operate evenhandedly," but instead have the "principal effect" of discriminating among religious sects. *Larson*, 456 U.S. at 253. And those constitutional concerns are all the more acute when a statute invites discrimination not just among religious sects, but within them as well.

This Court should be loath to impose on church plans a requirement that not only is inconsistent

with the statutory text and Congress' plain intent—not to mention decades of regulatory practice—but would invite exactly the kinds of First Amendment problems that Congress amended the statute to avoid. And the Court should be particularly loath to adopt an interpretation of the statute that could jeopardize the ability of countless religious organizations across the country to continue to better the lives of millions of people in need.

CONCLUSION

This Court should reverse the judgments below.

Respectfully submitted,

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